SUPREME COURT, U.S.
FILED
DEC 19 1980

No. 80-783

In the Supreme Court of the United States

OCTOBER TERM, 1980

PARK COUNTY, MONTANA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

JAMES W. MOORMAN
Assistant Attorney General

EDWARD J. SHAWAKER
MICHAEL A. MCCORD
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-783

PARK COUNTY, MONTANA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the 12-year period of limitations under the Quiet Title Act, 28 U.S.C. 2409a(f), applies to every action brought under that Act, notwithstanding that the plaintiff is a political subdivision of a state.

2. Whether, in the circumstances of this case, the district court properly concluded that the plaintiffs knew or should have known of the claim of the United States to the purported right-of-way more than 12 years before this action was brought.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	4
Conclusion	8

TABLE OF AUTHORITIES

Cases:

Boone County v. *Burlington and Missouri R.R.*, 139 U.S. 684	6
California v. *Arizona*, 440 U.S. 59	4
Grosz v. *Andrus*, 556 F.2d 972	7
Guaranty Trust Co. v. *United States*, 304 U.S. 126	6
Hatter v. *United States*, 402 F. Supp. 1192	5
Metropolitan R.R. v. *District of Columbia*, 132 U.S. 1	6
Munro v. *United States*, 303 U.S. 36	4
Soriano v. *United States*, 352 U.S. 270	5, 6
United States v. *422,978 Square Feet of Land, San Francisco*, 445 F.2d 1180	6
United States v. *Kubrick*, 444 U.S. 111	5
United States v. *Louisiana*, 127 U.S. 182	6
United States v. *Shaw*, 309 U.S. 495	4
United States v. *Sherwood*, 312 U.S. 584	4

Statutes:

Act of July 26, 1866, Rev. Stat. 2477, 43 U.S.C. (1970 ed.) 932	3
Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, Section 706(a), 90 Stat. 2793	3
Title V, 43 U.S.C. 1761-1771	3
Quiet Title Act, 28 U.S.C. 2409a	4, 5
28 U.S.C. 2409a(f)	3, 4, 5, 7

Miscellaneous:

H.R. Rep. No. 92-1559, 92d Cong., 2d Sess. (1972)	5

PREVIOUS PAGE WAS BLANK

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 13-17) is reported at 626 F.2d 718. The opinion of the district court (Pet. App. 18-22) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 29, 1980 (Pet. App. 24). The petition for a writ of certiorari was filed on November 15, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case concerns the title to a purported right-of-way easement located within the Gallatin National Forest in Montana. Petitioners Park County and Sweet Grass County, two political subdivisions of the State of Montana, contend that they were granted the right-of-way prior to establishment of the National Forest and that the right-of-way remains in their ownership.

The following facts are not in dispute. The right-of-way claimed by petitioners lies entirely within the boundaries of the Gallatin National Forest, and a substantial portion of the right-of-way coincides with either Forest Service Trail 104 or Forest Service Trail 184 (R. 2-3, 54-56, 59-61, 75, 76-77).[1] These trails have been maintained by the United States Forest Service as official trails since at least 1930 (R. 99-100). Neither Park County nor Sweet Grass County, at least since the establishment of the National Forest in 1902, has maintained Forest Service

[1] "R." refers to the Clerk's Record filed in the court of appeals.

Trails 104 or 184 or has authorized the expenditure of county funds to do so (R. 56-57, 61-62, 75, 77). On April 4, 1932, a portion of the Gallatin National Forest was designated as the "Absaroka Primitive Area" (R. 82). A portion of the right-of-way claimed by petitioners follows the course of Forest Service Trail 104 as that trail approaches the north end of the Absaroka Primitive Area near the intersection of the trail and a watercourse called Slough Creek (R. 68, 70). In 1962, the Forest Service placed a sign at the immediate west edge of Forest Service Trail 104 near its intersection with Slough Creek. The sign read as follows: "Entering Absaroka Primitive Area—Motor Vehicles Prohibited—Gallatin National Forest" (R. 68, 70, 96-98, 102-105; Pet. App. 21). In addition, the Forest Service simultaneously constructed a rock barrier across the trail in front of the sign (R. 96).

2. On October 4, 1976, petitioners brought this action against the United States [2] to quiet title to the claimed right-of-way. In their complaint petitioners alleged that between 1888 and 1893 a particular road had been established by use and that the route followed by this road generally corresponds to the route followed by Forest Service Trail 104. They also alleged that in 1893 a second intersecting road was surveyed by Park County [3] and that this second segment of the right-of-way generally follows the route presently designated as Forest Service Trail 184.

---

[2] The Cross Creek Protective Association, a local citizen organization, was subsequently permitted to intervene as a defendant.

[3] Sweet Grass County was part of Park County until 1895. The right-of-way is located partly in Park County and partly in Sweet Grass County (R. 2).

Petitioners further maintained that all legal requirements for establishing these roads were satisfied and that their actions constituted acceptance of a highway right-of-way grant on public lands pursuant to the Act of July 26, 1866, Rev. Stat. 2477, 43 U.S.C. (1970 ed.) 932.[4]

Following extensive discovery proceedings, the Cross Creek Protective Association moved for summary judgment on the ground that petitioners' suit was barred by the 12-year statute of limitations contained in 28 U.S.C. 2409a(f) (R. 79). The United States subsequently moved to dismiss petitioners' action for lack of subject matter jurisdiction (R. 93-95).

On March 17, 1978, the district court granted summary judgment for respondents (Pet. App. 18-22). It concluded (*id.* at 20) that petitioners knew or should have known of the adverse claim of the United States to the right-of-way more than 12 years prior to the filing of their suit and that, therefore, their action was barred by the 12-year period of limitations. In reaching this conclusion, the district court also ruled (*id.* at 21) that the provisions of 28 U.S.C. 2409a(f) apply to all quiet title actions against the United States, regardless of whether the plaintiff is a political subdivision of a State.

The court of appeals affirmed (Pet. App. 13-17). It agreed with the district court that the 12-year statute of limitations in 28 U.S.C. 2409a(f) applies

---

[4] 43 U.S.C. (1970 ed.) 932 read as follows: "The right of way for the construction of highways over public lands, not reserved for public uses, is granted." 43 U.S.C. (1970 ed.) 932 was expressly repealed by Section 706(a) of the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2793. The acquisition of rights-of-way over public lands is now governed by Title V of that Act, 43 U.S.C. 1761-1771.

to every action brought under the Quiet Title Act, notwithstanding that the plaintiff happens to be a political subdivision of a state (*id.* at 14-15). The court of appeals also ruled that petitioners should have known of the claim of the United States to the purported right-of-way on or before October 4, 1964 (*id.* at 15-16).

ARGUMENT

This case presents no issue warranting review by this Court. The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals.

1. Petitioners' first contention is that they are exempt from the 12-year statute of limitations in 28 U.S.C. 2409a(f) because they are political subdivisions of a State seeking to establish ownership of a public highway. The court of appeals' rejection of that argument is entirely consistent with the language and intent of 28 U.S.C. 2409a(f) and with the pertinent decisions concerning the application of statutes of limitations to governmental entities in suits against the United States.

It is well established that "[t]he United States, as sovereign, is immune from suit save as it consents to be sued [citations omitted] and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941). Accord, *United States* v. *Shaw*, 309 U.S. 495, 500-501 (1940); *Munro* v. *United States*, 303 U.S. 36, 41 (1938). Even a State of the Union may sue the United States to quiet a claimed title to land only by virtue of 28 U.S.C. 2409a. See *California* v. *Arizona*, 440 U.S. 59, 61-62 (1979). In invoking a waiver of sovereign immunity, the plaintiff—whether a State or county or private claimant—is required to take the bitter with

the sweet. As this Court has observed, the terms under which the United States consents to be sued "must be strictly observed and exceptions thereto are not to be implied." *Soriano* v. *United States*, 352 U.S. 270, 276 (1957). See also *United States* v. *Kubrick*, 444 U.S. 111, 117-118 (1979).

Congress provided a limited consent for suits against the United States to quiet title to real property through the Quiet Title Act, 28 U.S.C. 2409a. In particular, Congress established a 12-year statute of limitations for such quiet title actions in 28 U.S.C. 2409a(f), which provides:

> Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

The language of 28 U.S.C. 2409a(f) is clear; *any* civil action is barred unless it is brought within the prescribed 12-year period. The section sets forth no exceptions to this requirement. Moreover, petitioners have been unable to point to any language in the statute's legislative history indicating that counties should enjoy a status different from that of other litigants.[5] Since statutes of limitations in suits

---

[5] In fact, the legislative history reveals that a proposal to make the Quiet Title Act fully retroactive was rejected because of congressional concern that the courts would be flooded with litigation involving stale claims. See H.R. Rep. No. 92-1559, 92d Cong., 2d Sess. 5 (1972). See also *Hatter* v. *United States*, 402 F. Supp. 1192, 1194 (E.D. Cal. 1975). Under petitioners' theory, however, states and counties would be able

against the United States are to be strictly construed (see *Soriano* v. *United States*, *supra*, 352 U.S. at 276), petitioners have failed to meet their burden of showing that they are somehow exempt from the statutory language.

Furthermore, the pertinent decisions establish that, absent an express exception, states and counties are not exempt from statutes of limitations in actions against the United States. See, *e.g.*, *United States* v. *Louisiana*, 127 U.S. 182, 192 (1888); *United States* v. *422,978 Square Feet of Land, San Francisco*, 445 F.2d 1180, 1187-1188 (9th Cir. 1971). See also *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 135 n.3 (1938); *Boone County* v. *Burlington and Missouri River R.R.*, 139 U.S. 684, 693 (1891).[6] For example, in *United States* v. *Louisiana*, *supra*, this Court specifically held that a six-year statute of limitations was applicable against the State of Louisiana in its suit against the United States to recover proceeds from land sales.

In short, Congress may apply statutes of limitations against states and counties, and it did so with regard

---

to litigate quiet title actions against the United States involving claims which are many decades old. This result would obviously be contrary to congressional intent.

[6] The sole decision on which petitioners rely concerning this point (Pet. 8-9), *Metropolitan R.R.* v. *District of Columbia*, 132 U.S. 1 (1889), is inapposite. The decision contains *dicta* indicating that a general statute of limitations does not apply against states (*id.* at 11) and might not apply against the District of Columbia, at least in cases in which it attempted to vindicate some public right (*id.* at 12). The case was a suit not against the United States, however, but against a private corporation. The decision thus has no bearing on the power of Congress to prescribe the conditions on which the United States may be sued in a federal forum.

to the Quiet Title Act. The court of appeals properly concluded that petitioners were not exempt from the requirement that their action be brought within the 12-year period of limitations contained in 28 U.S.C. 2409a(f).

2. The second issue raised by petitioners—whether they knew or should have known of the claim of the United States more than 12 years before commencement of this action—is a narrow question highly dependent on the particular facts of this case. The question was correctly decided by the lower courts.

It is undisputed that in 1962 the Forest Service placed a sign at the immediate west edge of Forest Service Trail 104 at a point where the purported right-of-way coincides with the trail. This sign stated: "Entering Absaroka Primitive Area—Motor Vehicles Prohibited—Gallatin National Forest." The Forest Service simultaneously constructed a rock barrier across the trail in front of the sign.

Even assuming that petitioners had no knowledge of the United States' claim before 1962, the posting of the sign and construction of the rock barrier in that year put them on notice of the United States' exercise of ownership over the route followed by the purported right-of-way. See *Grosz* v. *Andrus*, 556 F.2d 972, 975 (9th Cir. 1977). The action of the Forest Service in prohibiting motor traffic on the route in question was completely adverse to petitioners' contentions that they possessed a right-of-way following the same route. Petitioners' additional argument (Pet. 11)—that even if the sign and rock barrier constituted notice as to that portion of the route behind the sign it constituted no notice as to the remainder of the route—is likewise without merit. Petitioners failed to show that the remainder of the

route would have any utility if the portion of the route behind the sign and the rock barrier were severed. Thus, petitioners were put on notice to make reasonable inquiry as to the remainder of the purported right-of-way.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

JAMES W. MOORMAN
Assistant Attorney General

EDWARD J. SHAWAKER
MICHAEL A. MCCORD
Attorneys

DECEMBER 1980

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 334831 210